state rates were void when Congress through the Interstate Commerce Commission had acted on the matter, the court did not expressly decide that those rates were unconstitutional without such regulation. But if the Interstate Commerce Act gives to the Commission the power to vary such rates this would seem to be such action by Congress as would exclude any state regulation previously permissible.

LANDLORD AND TENANT — RENT — CONSTRUCTIVE EVICTION AS DEFENSE TO ACTION FOR RENT. — The lessee of an apartment left before the end of the term because the stench from dead rats in the walls made the place untenantable. In an action for rent for the remainder of the term, he pleaded these facts as amounting to a constructive eviction. *Held*, that this plea is a good defense. *Barnard Realty Co.* v. *Bonwit*, 139 N. Y. Supp. 1050 (Sup. Ct., App. Div.).

It is well settled that eviction discharges the duty to pay rent. *Sully* v. *Schmitt*, 147 N. Y. 248, 41 N. E. 514; *Bass* v. *Rollins*, 63 Minn. 226, 65 N. W. 348. But the cases seem confused as to what facts may constitute an eviction. Some courts have held that a breach of covenant by the landlord causing the premises to become untenantable and the tenant to leave, will be sufficient. *Bass* v. *Rollins*, *supra*; *Lawrence* v. *Mycenian Marble Co.*, 1 N. Y. Misc. 105, 20 N. Y. Supp. 698. *Contra*, *Lunn* v. *Gage*, 37 Ill. 19. By others, however, it has been said that the tenant must leave because of affirmative acts by the landlord. See TIFFANY, LANDLORD AND TENANT, 1271; *Huber* v. *Ryan*, 26 N. Y. Misc. 428, 56 N. Y. Supp. 135. The better view would seem to be that if the landlord is under any duty in regard to the leased premises, the violation of which amounts to a tort, and a breach of this duty makes the premises untenantable, there will be an eviction. *Alger* v. *Kennedy*, 49 Vt. 109; *Sully* v. *Schmitt*, *supra*. Without express provision otherwise the lessor of a house need make no repairs. *Daly* v. *Wise*, 132 N. Y. 306, 30 N. E. 837; *Libbey* v. *Tolford*, 48 Me. 316. But when an apartment is leased, the view of the court in the principal case, that the space outside the inner walls is not included in the leasehold, seems reasonable, as the tenant cannot be considered as absolutely in control of all surrounding walls. It seems proper, therefore, that the duty to prevent rats within such walls from injuring the value of the leasehold should fall on the landlord; and his failure to repair resulting in a nuisance making the premises untenantable, should constitute a tort amounting to an eviction. *Maddon* v. *Bullock*, 115 N. Y. Supp. 723.

LEGACIES AND DEVISES — ABATEMENT — LEGACY CONDITIONED ON RELINQUISHMENT OF CLAIMS AGAINST THIRD PARTIES. — The defendant was entitled to an annuity for life in a trust fund. The testator bequeathed money to the defendant on condition that she relinquish all such rights in favor of a charitable organization. The estate proved insufficient to satisfy all the general legacies. *Held*, that if she elects to take the legacy it is liable to abatement. *Whitehead* v. *Street*, Weekly Notes of Feb. 15, 1913, 40 (Eng., Ch. Div., 1913).

The usual rule is that, in the absence of funds to satisfy the general legacies, they all abate together, even though the widow is among such legatees and is otherwise unprovided for. *Blower* v. *Morrett*, 2 Ves. 419; *In re Schmeder's Estate*, [1891] 3 Ch. 44. *Contra*, *In re Hardy*, 17 Ch. D. 798. Courts and textwriters have repeatedly declared that wherever a legacy is given in lieu of dower or relinquishment of a claim, there is priority. See *Davies* v. *Bush*, Younge 341, 343; *Zaiser* v. *Lawley*, [1902] 2 Ch. 799, 807; THEOBALD ON WILLS, 6 ed., 810; WILLIAMS ON EXECUTORS, 10 ed., 1093. Such has been the law for over two hundred years as to legacies in lieu of dower. *Burridge* v. *Bradyl*, 1 P. Wms. 127. But in England there seems to be no direct authority allowing priority to the legatee where other claims are given up. See